

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 988 of 1987

Date of decision: 9-9-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI DALUBHAI ALIAS DAHYARAMBHAI MISTRY

Versus

THAKOR DAHYABHAI ROHIT

Appearance:

MR MUKESH R SHAH for Petitioner

None present for Respondent No. 1

MR BN KESHWANI for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/98

ORAL JUDGEMENT

This appeal is directed by the claimant appellant against the award of the Motor Accident Claims Tribunal, Valsad District at Navsari, in Motor Accident Claim Petition No.219 of 1984 decided on 1st May, 1986. Under the said award the Tribunal awarded Rs.12,000/- as compensation for the injury sustained by the claimant appellant in a vehicular accident, with interest at the rate of 9% per annum from the date of petition till realisation. The Tribunal has held that the applicant was negligent to the extent of 50% and 50% negligence was taken to be of the other side, and the amount of compensation as found payable of Rs.24,000/- was reduced to 50% thereof. The claimant appellant claimed Rs.50,000/- as compensation. The break up of the amount of compensation awarded under different heads is as under:

Rs. 2,500/- for treatment

Rs. 700/- damage to the scooter.

Rs. 5,000/- towards loss of income for 5 months.

Rs. 6,000/- for future loss.

Rs. 9,800/- Pain, shock and suffering.

Rs.24,000/- Total

2. Learned counsel for the appellant contended that the Tribunal has committed serious illegality in holding that the applicant- appellant has contributed to the negligence to the extent of 50% in the accident. It has next been contended that the learned Tribunal has taken the monthly income of the appellant towards the lower side, and it should have been taken to be Rs.1500/- per month. On the other hand the learned counsel for respondents No.2 and 3 submitted that the Tribunal has passed just, adequate and reasonable amount in which this court may not interfere.

3. I have given my thoughtful consideration to the submission made by the learned counsel for the parties. Learned counsel for the appellant, in order to appreciate the first contention, has given out a rough sketch (map) of the site. Learned counsel for the respondent has no objection to consider this rough sketch to appreciate the contention raised by the learned counsel for the

appellant. From this sketch I find that the appellant was coming on scooter, and his wife was pillion rider, from west to east - from side lane towards national highway. The offending jeep was coming from south to north on the national highway. It is shown in this rough sketch map that there was slope in the side lane towards the side of the national highway. Towards both the sides of the side lane there were houses. So the highway was not visible from a distance to the scooterist who was coming from side lane towards the highway. Learned counsel for the appellant does not dispute that in the highway normally speed of the vehicles is reasonable. The scooterist - appellant herein, when he was coming from side lane to the high way, and particularly where towards both the sides of the side lane there were houses, he should have taken all the care and caution before entering on the highway. When he is going to enter on the highway there is presumption, which should have been taken, that heavy vehicle traffic may be there or even light vehicles may be running at reasonable speed. Moreover in this case there was slope on the side lane and more care and caution and vigilance was expected to be taken by the scooterist in this case. The place of the accident as marked in this sketch map shows that the scooterist has contributed to the accident by his negligence. It cannot be said that the driver was solely and wholly taken to be negligent for this accident. Now what should have been the proportionate negligence of two drivers, having gone through the judgment I am satisfied that 50% of negligence as has been taken on the part of the scooterist cannot be said to be towards the higher side. Moreover, in a matter of contributory negligence, when the Tribunal assessed the same on the basis of the evidence, this court sitting in appeal should not normally interfere with the same. The first contention of the learned counsel for the appellant is devoid of any substance.

4. So far as the second contention is concerned, it is a case of injury sustained by the appellant. The appellant in his deposition stated that his monthly earning is Rs.1000/- to Rs.1500/-. That was only his estimation. The learned Tribunal has rightly observed that the appellant has not produced any supporting evidence. Looking to the nature of the work, i.e. contractor of carpentry work, and in absence of supporting evidence of the income, the Tribunal has not committed any error in taking the income of the appellant to be Rs.1000/- per month. Much insistence has been made by the learned counsel for the appellant on the point that the Tribunal should have taken the higher figure

given by the claimant -appellant as income earned. In absence of any positive evidence except mere statement made by the appellant -claimant; and where two figures were given the Tribunal has to rely upon either of the figures or it could have applied reasonable mode of fixation of monthly salary. But it was not obligatory on the part of the Tribunal to take maximum figure. If this contention is accepted then it may have serious repercussions. Moreover it is not unknown that where the question of payment of tax arise, normal approach of the persons is to show lower income but when the question of claiming compensation for injury etc., arise all efforts are being made to show the maximum of the income. Keeping in view this normal human conduct of the people in this country, I find no substance in the contention of the learned counsel for the appellant that the higher figure should have been taken. It is understandable that cogent and satisfactory evidence supporting oral statement made by the claimant has been produced, but where there is only oral statement and where the Tribunal has taken reasonable approach, and in case where it has accepted the first figure no interference of this court is called for. No other point has been raised.

5. In the result this appeal fails and the same is dismissed.

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